

CRIMINAL PROCEDURE EXAMINATION
INSTRUCTOR: Harold Johnson
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GENERAL INSTRUCTIONS

The exam is lengthy, particularly the hypothetical. Take note of the point value of each section when budgeting your time. The basis of your analysis should be Federal Constitutional law with Massachusetts Constitutional law included where applicable and as contrast or comparison.

IDENTIFY YOURSELF BY SOCIAL SECURITY NUMBER ONLY.

RELAX AND GOOD LUCK.

INSTRUCTIONS BY SECTION:

SECTION I: 30 POINTS

Answer **THREE OF THE FIVE** questions. Be **concise**. You may, if you wish, use outline form where appropriate to answer, but do not neglect to discuss the key facts and the law and to conclude.

SECTION II: 70 POINTS

Follow the fact pattern isolating the issues, discussing the applicable facts, defining the law and concluding in the classic issue hypothetical. Answer in essay form.

SECTION I

30 POINTS

ANSWER THREE OF FIVE QUESTIONS

1. Police execute a search warrant at the home of your client, Dapper Dan. They search and find drugs. Your client is charged with the possession of the drugs. Dapper has a hunch that the affiant, Detective Drippy, was untruthful in the affidavit.

Under what circumstances can the factual statements in the affidavit be challenged in a hearing? What will be the result in this case?

2. Speedy is stopped by Officer Stringent for traveling at thirty-six miles per hour in a posted thirty-five speed zone. Stringent orders the driver, Speedy, and his passenger, Dumbstruck, out of the car. Stringent searches the car and finds a handgun tucked under the passenger seat. Both Speedy and Dumbstruck are charged with possession of the handgun.

A motion to suppress is filed on behalf of each.
What will the results be Federally? How about Massachusetts law?
Discuss the standards and issues.

3. Wilbur is arraigned before Judge Jiminy on a charge of Burglary. Cam Conscience is appointed, as counsel, to represent him. Wilbur is held on high bail and remanded to the jail. While Wilbur is at the jail Detective Hampstead Heath visits him in his cell. Cam is not present.

Heath reads *Miranda* warnings to Wilbur, verbatim from a card and correctly. Wilbur indicates that he understands the warnings. Heath asks, "So, Will, did you kill Orville before the burglary?" Wilbur replies, "I think I may need to speak to Cam." Heath responds, "Tell me the truth, Will. You will feel better." Wilbur replies, "Ya, I killed him."

A motion to suppress the statement is filed by Cam on Wilbur's behalf in the murder case. Will it be successful? Why or why not?

4. Percepto, a circus performer with world renowned ability to observe and recall minute detail, is, unfortunately, approached and robbed at gun point by Bobolink. Following the attack, Percepto describes his attacker as 5'10", bushy eyebrows, a small scratch on his forehead, fair skin, brown eyes and with a small scar on his lip. Percepto also describes the attacker's clothing in detail and includes the fact that the attacker was wearing a false diamond earring. Some weeks later, police develop leads indicating that the robber was, in fact, Bobolink. Police show Percepto a photograph of Bobolink. Percepto, somewhat theatrically, exclaims, "That is my attacker. He's not so tough

without that rusty handgun. And, of course, that diamond is one fourth carat smaller than the one he sported on the day of my ordeal. But, at least that one is real.”

Bobolink is charged with the robbery and brings a motion to suppress the out of court identification.

Will the motion succeed? What are the standard and issues? Describe the differences, if any, between the Federal and Massachusetts analysis.

5. Discuss the differences in definition of seizure of the person in the context of flight under the Federal and Massachusetts Constitutions. What is the relevance of the distinction?

SECTION II
70 POINTS
ISSUE HYPOTHETICAL

Each year, as the white remains of Winter recede and the robins return and grasses green, the nation turns its attention to, of all things, horse racing.

In late April the very epicenter of the horse racing universe is the venerable Anthill Downs, located in Thoroughbred City in Confusion, the fifty-first state in the union. Anthill Downs is an antique but well maintained racetrack with steep, beautifully appointed spectator areas, a church-like spire and an absurd air of solemnity. On the last Saturday in April, well-heeled horse owners, ambitious networkers and determined partygoers compete in a valiant if vain attempt to impersonate British nobility, complete with loud blazers and outlandish headgear.

This year's race favorite is "Bigfoot," owned by the multimillionaire, Gil Bates. Another contending horse is Waltzking, the product of Johnny Strauss Farms. During raceweek, the entrants are kept in the paddock area under the watchful eyes of the private security firm, Weseeya, Inc. The head security guard, who sports an official looking uniform reminiscent of the last Russian Czars, is Paul Pompous. Pompous, a former Thoroughbred City Police captain, is concerned about a rumor of "horse doping," a vile practice which consists of the illegal drugging of horses to manipulate race results. Pompous was told by Scallywag, a local racing aficionado who had himself once been convicted of racefixing, that one of the track executives, Lill E. Putt, is running the doping operation.

Lill is provided an ornate apartment on the grounds of Anthill Downs Corporation. Pompous decides to take action. During the evening, Pompous, using his pass key, enters Lill's apartment. Pompous searches and finds, in the closet, a case of morphine, a substance used to numb equine pain and increase performance without regard to horse health. Pompous returns to his office and calls a friend on the Thoroughbred City Drug squad, Detective Goggles. Pompous tells Goggles about the rumor, stating, "I looked in the apartment and saw morphine in the closet. Ya, gotta keep me outta this, though. But, Goggles, something must be done." Goggles replies, "I'll handle it." Goggles speaks to his colleagues, Detectives Stumbles and Babbles. The head of the drug squad, Captain Crush, is also consulted and a multifaceted plan is devised.

Detective Goggles travels to Anthill Downs, climbs a tree and peers into the window of Lill's apartment with night vision binoculars. He observes Lill and another person he recognizes as Doctor Pimento, who runs a local drug clinic. Unable to lip read, Goggles climbs down from the tree, ascends the fire escape and there places a water glass against the apartment's window and presses his ear against the glass. He hears Lill say, "Doc, honey, I need another case of morphine. We'll shoot up Waltzking, he'll beat Bigfoot and we'll be rich." Goggles climbs back down the fire escape.

Detective Stumbles waits outside the Galloping Hoof Bar in Thoroughbred City. Stumbles observes Needles, a known heroin addict. Stumbles approaches Needles and

says, "Hey, Needy, how's it goin'?" Needles reaches for his left jacket pocket. Stumbles says, "Hold it." Stumbles pats the exterior of Needles' jacket and immediately feels what he thinks is a syringe. Stumbles then pats the right side of the jacket and feels the outline of a metal handgun. Stumbles removes the gun. Stumbles then reaches into the left pocket and pulls out a small tube like device filled with water, which he immediately recognizes as an ear cleaner. Needles states, "Ear ache."

Stumbles arrests Needles for the unlicensed handgun. Needles is transported to the police station. Stumbles asks Needles booking questions, parents' names, date of birth, etcetera. Stumbles then says, "Needy, you know the drill. You have the right to a mouthpiece. You can keep quiet. If you say anything, it can be used against you. If you can't afford a lawyer you'll be given one. You know?" Needles replies, "I have a lawyer, Norm Navigator. Stumbles felt it imprudent to mention that Attorney Navigator was, at that precise moment, in the foyer of the police department trying to get in to see Needles. Stumbles says, "Well, Needy, what about the gun? Needles responds, "I need the gun to get in and out of the Hoof alive. There's money all over the place in there. They're running a betting operation. The owner, Breeches, is taking all kinds of action on Bigfoot. He must be crazy, he'll never be able to pay when Bigfoot wins." Needles is placed in the cell.

Detective Stumbles confers with Captain Crush. Stumbles writes an affidavit, and at Crush's direction, takes it to the home of Moby Magistrate, a longtime friend of Crush who is due to retire the next day. Moby reviews the application and affidavit. Stumbles includes in the affidavit requesting a search warrant for the Galloping Hoof, the information received from Needles, naming him. Stumbles also includes his own observations, made coincidentally over the two previous weeks, of known gambling addicts leaving the bar with slips of paper. Moby signs the warrant, checking the nighttime execution provision and permitting a "no knock" entry as well as the search of all persons present.

Detective Stumbles, with other officers assisting, approaches the Galloping Hoof. A bouncer, Toohuge, steps in front of Stumbles. Stumbles shows Toohuge the warrant. Toohuge refuses to move and pushes Stumbles. Stumbles strikes Toohuge with his service baton in the left knee. Just as the police are about to enter, Breeches walks out the front door. Breeches is not allowed to leave and is handcuffed and brought back into the bar. A search of the bar area yields betting slips. A search of the person of Breeches yields a cell phone. Detective Stumbles looks into the contents of the cell phone and there finds text messages back and forth to Lill regarding the number of bets on Bigfoot. A bar patron, Clockwinder, is searched and a small rock of cocaine is found on his person. Evidence found at the scene and seized includes some two-hundred thousand dollars in cash, a number of bags of marijuana and a live Bengal tiger, which was kept in a second floor storage room.

Back at the station, Breeches is questioned. Following *Miranda* warnings, Breeches says, "I'm saying nothing." Stumbles says, "Breech, listen, Mrs. Breeches is in the waiting room. Her name's on the bar, too. I'd hate to see her mixed up in this." Breeches responds, "Lill. It's her show. She keeps the morphine at her apartment. She was gonna drug all the horses, except Bigfoot, so they'd out run him. She said we'd all get rich." Breeches is placed in a cell.

Following this, Detective Babbles, along with other members of the drug squad devises a plan. Coincidentally, one of the intersections near Anthill Downs has the most driving while intoxicated arrests in Thoroughbred City. The Realfast Horse Association's clubhouse is near the intersection. Lill is known to have a few glasses of wine there each night and then drive through the intersection. Babbles hurriedly constructs a "sobriety checkpoint" to take place later that evening at the intersection. The police had published the likelihood of a roadblock in the local paper, but had actually intended to establish it one day later and a block away.

Captain Reg of the motor vehicle division, in accordance with policy, begins the roadblock at ten o'clock in the evening. All vehicles are stopped and those drivers showing signs of alcohol ingestion are directed to speak to officers off to the side.

The first car approaching the roadblock is that of the former jockey, Afterburn. Afterburn sees the roadblock, stops the car before arriving at it and runs. Officer Burly tackles him. He later registers a .21, well above the legal limit, when, after refusing a breathalyzer, police, with the help of a nurse, draw blood and it is analyzed.

Later, Lill is stopped in her Mercedes. Lill, not surprisingly, smells of alcoholic beverage and is directed to the side. Babbles asks Lill to perform field sobriety tests, including asking her the date six years before her date of birth. Lill cannot remember her actual date of birth. She fails the other field tests and is arrested for driving while intoxicated. Lill's vehicle is towed. A search of the trunk yields morphine and betting slips in a number of locked containers.

Meanwhile, Detective Goggles had appeared before Moby Magistrate. Goggles applied for a search warrant and included in the affidavit the information from Pompous, whom he described as a confidential informant, regarding Pompous' secret entry into Lill's Apartment. He also included his binocular observations and his glass-listening results as well as the statement of Breeches. Moby issues a search warrant for Lill's apartment. Goggles goes to the apartment with other officers. Goggles knocks at the door and Doctor Pimento opens the door. Goggles says, "Doc what are you doing here?" Pimento replies, "I live here with Lill. Goggles responds, Doc, your girlfriend is in a heap of trouble. Want to let us in to search?" Pimento replies, "I don't think so." At that instant, Lill's adult daughter, Teeter, emerges from the living room. Teeter says, "This old coot, the good Doctor, doesn't even live here. He just stays with mom once in a while. You can search the house. Mom's up to something. Start in the closet." Goggles shows Doctor Pimento the search warrant. The police search.

The search reveals evidence of race fixing, including the morphine in the closet. Just as Goggles and the other officers are finishing the search, Thoroughbred City Police Officers assigned to the Burglary Squad break down the door. Officer Ram, the leader, tells Detective Goggles that a silent burglar alarm for the apartment rang back at the station and in accordance with policy the Burglary Squad entered forcibly to secure the apartment.

It is later learned that Teeter, herself, was only there to rearrange her mother's furniture in accordance with the principles of feng shui. Teeter had yet to finish the task.

Lill is charged with the following:
Conspiracy to commit a crime; racefixing;
Unlawful gaming;
Illegal possession of morphine;
Driving under the influence of liquor.

Doctor Pimento is charged with:
Conspiracy to commit a crime; race fixing.
Possession of morphine.

Needles is charged with illegal handgun possession.

Breeches is charged with:
Unlawful gaming;
Possession of marijuana;
Conspiracy to commit a crime; race fixing;
Possession of a member of endangered species; the tiger.

Toohuge is charged with assault and battery on a police officer.

Clockwinder is charged with cocaine possession.

Afterburn is charged with driving under the influence.

**PLEASE DISCUSS WHAT, IF ANY, CONSTITUTIONAL ISSUES ARE RAISED.
WHAT EVIDENCE WILL BE AVAILABLE OR EXCLUDED AS AGAINST THE
PARTIES AS A RESULT? WHY OR WHY NOT?**

**REMEMBER, THE BASIS OF YOUR ANSWER SHOULD BE FEDERAL
CONSTITUTIONAL LAW, USING MASSACHUSETTS CONSTITUTIONAL
LAW AS CONTRAST.**

REMEMBER 'IRAAC.'